IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE T.R.RAMACHANDRAN NAIR

TUESDAY, THE 13TH NOVEMBER 2007 / 22ND KARTHIKA 1929

OP.No. 10590 of 2001(I)

PETITIONER:

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1. T.L. VARKEY, S/O. LONA THALIATH, PALACE ROAD, ALUVA.

2. T.L. JACOB THALIATH, 23, KKP NAGAR, U.C. COLLEGE P.O., ALUVA.

BY ADV. SRI.K.I.MAYANKUTTY MATHER
SRI.SUNIL SHANKER

RESPONDENTS:

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1. TAHSILDAR, ALUVA.

2. STATE OF KERALA REPRESENTED BY CHIEF SECRETARY TO GOVERNMENT, SECRETARIAT, TVM,.

3. DEPUTY TAHSIDLAR (R.R.), ALUVA.

BY GOVERNMENT PLEADER SHRI C.K. GOVINDAN

THIS ORIGINAL PETITION HAVING BEEN FINALLY HEARD ON 13/11/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

ORDER ON CMP NO.16890/2001

DISMISSED.

13/11/2007 SD/- T.R. RAMACHANDRAN NAIR, JUDGE

APPENDIX

EXT.P1-TRUE COPY OF THE RELEASE DOC NO.2534 OF 1984 DT.8.6.1984

EXT.P2-TRUE COPY OF REVISED BUILDING PERMIT DATED 15.12.1997

EXT.P3-TRUE COPY OF AGREEMENT DATED 27.6.1995

EXT.P4-TRUE COPY OF OCCUPANCY CERTIFICATE DATED 3.8.98

EXT.P5-TRUE COPY OF AGREEMENT DATED 4.8.95

EXT.P6-TRUE COPY OF NOTICE ISSUED BY R1 DATED 15.5.99

EXT.P7-TRUE COPY OF REPLY BY THE PETITIONER TO R1

EXT.P8-TRUE COPY OF NOTICE ISSUED BY R1 DATED 17.10.2000

EXT.P9-TRUE COPY OF NOTICE ISSUED BY R1 DATED 20.11.2000

EXT.P9(A)-TRUE COPY OF LETTER BY PETITIONER TO R1 DAED 25.11.2000

EXT.P10-TRUE COPY OF ASSESSMENT ORDER DATED 7.3.2001

EXT.P10(A)-TRUE COY OF DEMAND NOTICE ISSUED BY R1 DATED 7./3/2001

EXT.P11-TRUE COPY OF ASSESSMENT ORDER DATED 30./1/2001

EXT.P12-TRUE COPY OF LETTER ISSUED BY THE PETITIONER TO THE MUNICIPAL SECRETARY DT.8.9.99

EXT.P12(A)-TRUE COPY OF RECEIPT DATED 24.9.99

// TRUE COPY //

P.S. TO JUDGE

T.R.RAMACHANDRAN NAIR, J.

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O.P. No. 10590 of 2001 - I.

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Dated this the 13th day of November, 2007.

J U D G M E N T

The petitioners are aggrieved by Ext.P10 and P10(a) order of assessment under the Building Tax Act followed by the notice of demand. The case of the petitioners is that they are the joint owners of 48.75 cents of land comprised in Survey No.235/3 and 234/4 of Aluva West Village. The petitioners are partners of a firm by name 'United Wood and Metal Industries'. For developing the area the firm applied and obtained permission from the Aluva Municipality for construction of a three storeyed commercial complex. Ext.P2 is the building permit. They entered into an agreement with a company by name 'Build 'N' Style Projects Pvt. Ltd' as per Ext.P3. At the time of filing of the Original Petition the floor work upto the first floor was over. Ext.P4 is the occupancy certificate issued by the Aluva Municipality. The petitioners have given in the writ petition the names of persons who are the buyers of the built up areas in the basement and ground floor. It is stated that the cost of construction was met by respective allottees.

2. By Ext.P6 notice the first respondent directed the petitioners to submit their return for the purpose of assessment of tax. Ext.P7 is their reply and Ext.P8 is the further notice directing them to appear for hearing on

21.10.2000. The case of the petitioners is that on the date of hearing the Managing Director of the builder represented the petitioners and pleaded for finalisation of assessment excluding any liability on the part of the petitioners, since the built up portions are owned by separate owners.

3. Now going by Ext.P10 the assessment has been finalised by taking the built up area of 7881 sq. metres., taking the whole plinth area of six floors and Rs.13,91,400/- has been assessed as building tax.

4. The learned counsel for the petitioners relied upon the decisions of this Court reported in *Bhattathiripad v. Tahsildar* (1994(1) KLT 790, *S.Balu v. State of Kerala* (1994 KLJ (Tax Cases) 278, *Kurian George v. Tahsildar* (1995(2) KLT 457), *Lissy v. Tahsildar* (2000(3) KLT 497) and a recent decision in *Bavasons Constructions (P) Ltd. v. State of Kerala* (2007 (3) KLT 101). It is submitted that the assessment has been completed without considering the effect of Explanation 2 of Section 2(e) of the Kerala Building Tax Act. It is also submitted that different owners have not been issued notice in the matter before finalising the matter.

5. In Bavasons Constructions (P) Ltd. v. State of Kerala (2007(3) KLT 101), a similar question was considered and the procedure to be followed was explained in para.9, which reads as follows:

> **"9. The petitioners-builders shall produce materials before the concerned Tahsildars regarding the allotment of individual flats to the respective owners. They shall also**

produce the agreements entered into with the owners of flats and also evidence to show that the payments were made by the allottees from time to time to foot the bills for the construction. They shall produce their books of accounts and bank statements. They shall also produce the deeds, assigning the undivided interest in the property. They shall produce those materials before the concerned Tahsildars before 30/04/2007. If those materials are produced to show that the construction of the flats is covered by Explanation 2 to S.2(3) of the Building Tax Act, then, the assessments shall be made separately. The assessing authorities shall consider the claim relating to each flat and render a separate speaking decision with reference to each flat. A common order can be passed for each residential complex. But, in that order, there should be separate finding regarding each flat/apartment. In case any flat is remaining unallotted, the assessment in respect of such flat shall be made, treating the builder as the owner. In case, in relation to a particular flat, sufficient materials are not produced to support the claim for the benefit of Explanation 2 to S.2(e), then also, the assessment shall be made, treating the builder as the owner of the apartment. While making separate assessments of the flats, the common area shall also be divided on *pro rata* basis, so that the entire built up area of the building is assessed to building tax. The petitioners shall also furnish the correct addresses, as far as possible, of the allottees of the flats, to the assessing authorities. The assessing authorities shall afford an opportunity of being heard to the petitioners-builders and the individual flat owners and pass final orders in the matter, as far as possible, before 30/07/2007. They shall, as stated earlier, deal with the assessment relating to every flat/apartment separately, with reference to the documents produced. In this context, it is apposite to remind the assessing authorities, the powers conferred on them under S.17 of the Act."

6. The learned Government Pleader points out by referring to the pleadings in the counter-affidavit that the case of the petitioners have not been substantiated in the hearing and it is accordingly the assessment was finalised. But a reading of the assessment order, does not show that the plea

raised by the petitioners have been considered in the light of the legal principles laid down by this Court in the various decisions.

7. Therefore, Exts.P10 & P10(a) are quashed. The petitioners shall produce before the first respondent along with a copy of this judgment, the names of all persons who, according to the petitioners, are the respective owners of various portions of the building for enabling the first respondent to issue notice to them and hear them before the assessment is finalised within one month from today. The first respondent will finalise the assessment after hearing all the parties concerned within a period of four months from thereof.

The Original Petition is disposed of as above.

T.R.RAMACHANDRAN NAIR,
JUDGE.

Kvs/-